

1 Lisa M. Chapman (SBN #118113)
2 NIXON PEABODY LLP
3 200 Page Mill Road, Second Floor
4 Palo Alto, CA 94306-2022
5 Telephone: (650) 320-7700
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7 Attorney for Plaintiff
8 MICHEL GELINAS

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 MICHEL GELINAS, an individual,
12 Plaintiff,

13 vs.

14 THE BERGQUIST COMPANY, a Minnesota
15 corporation, and DOES 1 – 20, inclusive,
16 Defendants.

Case No.: C-08-02137 PVT

DECLARATION OF LISA M. CHAPMAN

17
18 I, Lisa M. Chapman, declare that:

19 1. I am an attorney with the law firm of Nixon Peabody LLP. I am one of the attorneys
20 for Plaintiff, Michel Gelin, in the above-entitled action.

21 2. Attached hereto as Exhibit A is a true and correct copy of the Initial Report or Claim
22 filed with the State of California, Department of Industrial Relations, Division of Labor Standards
23 Enforcement, State Labor Commissioner.

24 3. Attached hereto as Exhibit B is a true and correct copy of Gelin's Notice of Motion
25 to Dismiss filed with the United States District Court for the District of Minnesota in Case No. 0:08-
26 CV-00569.

27 4. Attached hereto as Exhibit C is a true and correct copy of Gelin's Motion to Dismiss
28 filed with the United States District Court for the District of Minnesota in Case No. 0:08-CV-00569.

1 5. Attached hereto as Exhibit D is a true and correct copy of the Proof of Service filed
2 with the Superior Court of California in and for the County of Santa Clara in Case No.
3 108CV109164.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on July 8th, 2008 at Palo Alto, California.


6
7 
8 Lisa M. Chapman

EXHIBIT A

STATE OF CALIFORNIA - DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF LABOR STANDARDS ENFORCEMENT
STATE LABOR COMMISSIONER

FOR OFFICE USE ONLY - NO ESCRIBA EN ESTA SECCION

Taken by	Wage Adjudication	
Date filed	Action	SIC Number

Initial Report or Claim/ Reporte Inicial O Reclamo

PLEASE PRINT ALL INFORMATION / POR FAVOR ESCRIBA CON LETRA DE MOLDE TODA LA INFORMACIÓN

If interpreter needed, what language?/Si necesita un interprete, que idioma? :

Your name / Su nombre Michel Gelinas	Interpreter needed / Interprete requerido <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Social Security Number / No. de Seguro Social 613-02-1859	Date of birth / Fecha de nacimiento 5-21-1967
Your address - Number and street, apartment or space no. Su domicilio - No. y calle, apartamento o no. de espacio 2380 Dyden Avenue		Home phone no. Teléfono - casa (408) 846-9184	Work phone no. / current No. de teléfono de su trabajo actual (408) 847-3370
City, State, Zip Code / Ciudad, Zona Postal Gilroy, CA 95020		California Driver's License No. / CA. I.D. Number No. de Licencia de Conducir o Identificación de California	

AGAINST / EN CONTRA

Name of business / Nombre del negocio The Berquist Company	<input type="checkbox"/> Corporation <input type="checkbox"/> Sole owner <input type="checkbox"/> Partnership <input type="checkbox"/> LLC-LLP <input type="checkbox"/> Bankruptcy <input type="checkbox"/> Business sold <input type="checkbox"/> Business closed	<input type="checkbox"/> Sociedad anonima <input type="checkbox"/> Propietario <input type="checkbox"/> Sociedad <input type="checkbox"/> LLC-LLP <input type="checkbox"/> Bancarrota <input type="checkbox"/> Negocio vendido <input type="checkbox"/> Negocio cerrado
Employer's vehicle license no./Numero de licencia del vehículo del empleador: <u>Not applicable</u>		
Address of business, City, State, Zip Code / Dirección del negocio, Ciudad, Zona Postal 18390 West 78th Street Chanhassen, MN 55317		
Name of person in charge / Nombre de la persona a cargo Diane Erdman	Telephone no. / No. de teléfono 800-347-4577	Type of business / Tipo de negocio Manufacturer
Type of work performed / Ocupación, tipo de trabajo hecho Sales	Date of hire / Fecha de empleo 4-27-2004	Public Works Project? ¿Proyecto de Obras Públicas? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Location where work performed - Number and Street, City, County, Zip Code / Lugar donde trabajó - No. de Calle, Ciudad, Condado, Zona Postal Gilroy, CA 95020		No. of employees / No. de empleados Unknown
Was your job union? ¿Pertenece Ud. a un sindicato? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

WAGES - CONDITIONS OF EMPLOYMENT / SUELDO - CONDICIONES DE EMPLEO

Rate of pay - per hour, day, week or month or piece rate (specify) Tasa de pago - por hora, día, semana, mes o por pieza (especifique) \$ 139,700. annually + commission	Total hours worked / Total de horas trabajadas By day By week 40+	Paid Overtime? ¿Le pagaban el sobretiempo? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are you still working for this employer? ¿Aún sigue trabajando para este patrón? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Discharged Despedido	On what date? ¿En que fecha? 10-22-2007
If quit, did you give 72 hours notice? ¿Si renunció, dió Ud. 72 horas de aviso? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Have you asked for your wages? ¿Ha solicitado su sueldo? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Were you paid at time of discharge? ¿Le pagarán cuando lo despidieron? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, on what date? Si es que si, ¿en que fecha? 10/22/07 and others		<input checked="" type="checkbox"/> In person / En persona <input type="checkbox"/> By mail / Por correo
How were you paid? ¿Cómo le pagaban? <input checked="" type="checkbox"/> By check / con cheque <input type="checkbox"/> In cash / en efectivo	Given a deduction slip? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No ¿Le dieron un talón de deducciones?	Did you keep a record of hours worked? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No ¿Tiene récord de las horas trabajadas?

GROSS WAGES CLAIMED/ GANANCIAS EN BRUTO RECLAMADAS

From (date) / De (Fecha) 4-27-2004 mo. / date / yr.	To (date) / A (Fecha) 10-22-2007 mo. / date / yr.	Number of hours, days, weeks or months (Specify: vacation, commission, expenses, overtime) No. de horas, días, semanas o meses reclamados (Especifique: vacaciones, comisión, gastos, sobretiempo) Commission
At the rate of - per hour, day, week or month (specify) Al pago de - por hora, día, semana o mes (especifique) \$		Gross amount claimed Cantidad en bruto reclamada \$ 91,118.40
Brief explanation of issues (use additional sheet if necessary) Breve explicación de los hechos (use papel adicional si es necesario) See attached		Less amount paid: Menos la cantidad recibida \$
		Amount claimed: Cantidad o saldo reclamado: \$

I hereby certify that this is a true statement to the best of my knowledge/Por el presente, que esta es una declaración verídica conforme a mi conocimiento.

Signed: Michel GelinasDate: 05/02/08

Attachment to Michel Gelinas' Claim

Unpaid Bonus/Commission

The terms of Claimant's employment provided that he was to be paid a base salary plus commissions earned. The commissions were called "bonus" payments. The total amount of commission (or bonus) payments that he was entitled to receive at the time of his discharge was 75,000.00.

Penalty

The Claimant was discharged from his employment with Bergquist on October 22, 2007. He did not receive wages that he was owed for the weeks immediately prior to his termination until ten (10) days later on November 2, 2007.

The Claimant did not receive a check for the expenses that he had previously submitted until November 16, 2007, twenty four (24) days after he was discharged.

The Claimant did not receive a check for bonus payments that were due to him until he received a partial payment on December 21, 2007, twenty-nine (29) days after he was discharged.

Under California Labor Code, Section 201, Bergquist was obligated to pay the Claimant all wages due at the time he was discharged. This includes salary and bonus payments due at the time he was discharged. A willful failure to make these payments justifies a finding that Bergquist owes the Claimant penalties pursuant to Labor Code Section 203. Claimant is entitled to a penalty award in the amount of \$16,118.40.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

THE BERGQUIST COMPANY,

Plaintiff

v.

MICHEL GELINAS,

Defendant.

Case No. 0:08-cv-00569-DWF-JJK

**DEFENDANT'S NOTICE OF
MOTION TO DISMISS**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on June 24, 2008, Defendant, Michel Gelinas, hereby filed his Motion to Dismiss with proposed Order with respect to the Complaint served by Plaintiff, The Bergquist Company, on or about May 13, 2008. **FURTHER TAKE NOTICE** that Defendant's motion will be heard on August 8, 2008 at 9:00 a.m. C.S.T., before the Honorable Judge Donovan W. Frank, United States District Court, District of Minnesota, in Courtroom 1 of the U.S. Courthouse, Seventh Floor, 180 East Fifth Street, Saint Paul, Minnesota.

Dated this 24th day of June, 2008.

MICHEL GELINAS, Defendant,

By: /s/ Roshan N. Rajkumar
Roshan N. Rajkumar
BOWMAN AND BROOKE, LLP
150 South Fifth Street, Suit 3000
Minneapolis, MN 55402
(612) 339 8682
(612) 672 3200 (facsimile)
Roshan.Rajkumar@msp.bowmanandbrooke.com

and

Margaret C. Hershiser (NE 19545)
KOLEY JESSEN P.C., L.L.O.
One Pacific Place, Suite 800
1125 South 103rd Street
Omaha, NE 68124-1079
(402) 390 9500
(402) 390 9005 (facsimile)
Margaret.Hershiser@koleyjessen.com
(pro hac vice application to be submitted)

Attorneys for Defendant

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

THE BERGQUIST COMPANY,

Plaintiff

v.

MICHEL GELINAS,

Defendant.

Case No. 0:08-cv-00569-DWF-AJB

**DEFENDANT'S MOTION TO
DISMISS**

Defendant, Michel Gelinas ("Gelinas"), hereby moves under Federal Rule of Civil Procedure 12(b) and Local Rule 7.1(b) for a dismissal of the Complaint filed by Plaintiff, The Bergquist Company. In support of this Motion, Gelinas states:

1. The Court lacks subject-matter jurisdiction over this case because the amount in controversy requirement for diversity jurisdiction has not been met and the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, does not provide an independent basis of federal jurisdiction; and

2. Plaintiff fails to state a claim upon which relief can be granted because there is no agreement between the parties to arbitrate any purported violations of the Non-Compete, Non-Solicitation and Confidentiality Agreement.

WHEREFORE, for the foregoing reasons, as well as those set forth in the Memorandum of Law in Support of Defendant's Motion to Dismiss, Defendant, Michel Gelinas, respectfully requests that the Court grant his Motion to Dismiss.

Dated this 24th day of June, 2008.

MICHEL GELINAS, Defendant,

By: /s/ Roshan N. Rajkumar

Roshan N. Rajkumar
BOWMAN AND BROOKE, LLP
150 South Fifth Street, Suite 3000
Minneapolis, MN 55402
(612) 339 8682
(612) 672 3200 (facsimile)
Roshan.Rajkumar@msp.bowmanandbrooke.com

and

Margaret C. Hershiser (NE 19545)
KOLEY JESSEN P.C., L.L.O.
One Pacific Place, Suite 800
1125 South 103rd Street
Omaha, NE 68124-1079
(402) 390 9500
(402) 390 9005 (facsimile)
Margaret.Hershiser@koleyjessen.com
(pro hac vice application to be submitted)

Attorneys for Defendant

EXHIBIT D

1 Lisa M. Chapman (SBN #118113)
2 NIXON PEABODY LLP
3 200 Page Mill Road, Second Floor
4 Palo Alto, CA 94306-2022
5 Telephone: (650) 320-7700
6 Fax: (650) 320-7701

7 Attorney for Plaintiff
8 MICHEL GELINAS

RECEIVED
2008 APR 10 P 3:12
CLERK OF SUPERIOR COURT
COUNTY OF SANTA CLARA
M. Rosales

9 SUPERIOR COURT OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SANTA CLARA

11 MICHEL GELINAS, an individual,

12 Plaintiff,

13 vs.

14 THE BERGQUIST COMPANY, a Minnesota
15 corporation, and DOES 1 – 20, inclusive,

16 Defendants.

Case No.: 108CV109164

PROOF OF SERVICE

BY FAX

17
18 Please see attached.
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PROOF OF SERVICE

10976052.1

CALENDAR

Michel Gelinas, an individual, et. al., Plaintiff(s)
vs.
The Berquist Company, et. al., Defendant(s)

Service of Process by



APS International, Ltd.
1-800-328-7171

Law Firm Requesting Service:
NIXON PEABODY LLP
Kerry L Ortiz
200 Page Mill Road, Second Floor
Palo Alto, CA 94306-2022
Customer File: 049457/02

AFFIDAVIT OF SERVICE ON A CORPORATION

--The Berquist Company
Court Case No. 108CV109164

State of: Minnesota, ss.
County of: Minneapolis

Name of Server: Ryan Landry, undersigned, being duly sworn, deposes and says that at the time of service, s/he was over the age of twenty-one, was not a party to this action;

Date/Time of Service: that on 03-Apr-2008 10:10 am

Place of Service: at 18930 W 78th Street, city of Chanhassen, state of MN

Documents Served: the undersigned served the documents described as:

Civil Lawsuit Notice;

Summons and Complaint for Declaratory Relief;

Service of Process on, A true and correct copy of the aforesaid document(s) was served on:

Person Served, and The Berquist Company

Method of Service: By delivering them into the hands of an officer or managing agent whose name and title is Mark Fandrich, Controller

Other Information: and by mailing a copy of the documents listed above to the party, to the address shown above, by first class mail, postage prepaid on April 3, 2008 from Minneapolis, MN 55439

Description of The person receiving documents is described as follows:

Person Receiving Documents: Sex M; Skin Color white; Hair Color Grey; Facial Hair
Approx. Age 43; Approx. Height 5'11"; Approx. Weight 185

☒ To the best of my knowledge and belief, said person was not engaged in the US Military at the time of service.

Signature of Server: Undersigned declares under penalty of perjury that the foregoing is true and correct.

Signature of Server

APS International, Ltd.
APS International Plaza • 7800 Glenroy Rd.
Minneapolis, MN 55439-3122

Subscribed and sworn to before me this 7th day of April, 2008

Notary Public (Commission Expires)

